IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.412 OF 2006

Bharat Ramesh Gandhi .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.S.U.Marwadi for applicant
Mr.Y.M.Nakhwa, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 24th November 2006.

P.C.

. Heard both sides. Rule. By consent Rule made returnable forthwith.

2. Applicant is aggrieved by the order refusing to discharge him from Sessions Case No.1032 of 1999.

3. Applicant is original accused No.1 in this case. It arises out of C.R.No.359 of 1997

registered with Vile Parle police station, Mumbai alleging offences punishable under section 304, 427, 325, 323 read with 34 I.P.C.

4. A complaint was lodged by one P.S.Gaikwad alleging that a building "Pravin Smriti" of ground plus six upper floors collapsed resulting in the death of two persons and injuring others. Applicant was appointed as an Architect of the project.

5. He applied by Misc.Application No.250 of 2006 for discharge from the case, to the extent that no offence under section 304 I.P.C. is disclosed in the facts of this case.

6. Application for discharge was the second application. Misc.Application No.235 of 2005 was preferred by the very applicant before me and the same was rejected by the learned Additional Sessions Judge on 19th November 2005.

7. This order was challenged by the applicant in this Court by instituting Criminal Application No.621 of 2006. This Court on that application passed the following order:-

> " This application impugns an order dated 19.11.2005 passed by the Additional Sessions Judge, Mumbai rejecting an application for discharge. Grievances made by the applicant is that the police had wrongly filed a charge sheet under section 304 Part II though the ingredients of the said section are not attracted to the facts of the present case. The applicant is an Architect in respect of the building Pravin Smriti which had collapsed on 16/8/1997 in which two persons were lost their life. It appears from the record that the application was made for clear discharge

and by impugned order discharge is refused on the ground that prima facie case is made out and therefore, the applicant cannot be discharged. In the impugned order, it is nowhere mentioned that the offence under section 304 Part II has been made out. The Sessions Court is not bound by the sections that are mentioned by the police in the charge sheet and while framing charge, the Sessions Court has to apply its mind judicially and consider the nature of the offence in respect of which there exist material for framing charge. Admittedly, charge has not been framed. In the circumstances, the trial court is directed to frame a charge after carefully considering the nature of the offence and the material against the present applicant. Needless to say that if the applicant aggrieved by nature of

> the charge, he will have liberty to file an application challenging the said order. The contention in the application that there is no material to frame charge under Section 304 part II to be left open to be agitated in such revision application. Application stands disposed off in the aforesaid terms."

8. It appears that the charge is not framed. It appears that despite trial court being directed to frame charge after carefully considering the nature of the offence and material against the present applicant apprehending that the charge would be framed against the applicant under section 304 Part II, he preferred Misc.Application No.250 of 2006 for discharge. In addition to the materials which were produced by the prosecution considering the order of this Court, reproduced above, Argument advanced on behalf of applicant is that his

services were engaged as an Architect. It is nobody's case that the company B.R.Construction which purchased the plot and acquired services of various persons had placed any other responsibilities on the applicant beyond being an Architect for the project. The case of prosecution is that this six storyed building collapsed on 16th August 1997. Building in fact was complete and occupied in the year 1986. Argument further is that upon the building being constructed in accordance with the design prepared by the Architect and thereafter occupied, the liability/responsibility of the Architect comes to an end and, in any event had come to an end, in this case after two years.

9. The building had been repaired subsequently in the year 1993 and 1996. The F.I.R. does not allege any role played by this applicant in these repairs. The allegations in the F.I.R. as reproduced by the learned Judge

clearly show that the construction was carried out by some other agency. The building was occupied. Building collapsed in the year 1997. Argument before the trial court proceeded on the basis of the materials produced by the prosecution to support framing a charge under section 304 I.P.C. Relying upon this very material, the contention is that complaints were made with regard to the inferior quality of work and the construction agency collected monies and carried out some repairs. Further, the occupants and residents of the building had carried out some alterations and additions, which affected the structure.

10. Taking note of the contentions on behalf of the applicant as also A.P.P. the learned Additional Sessions Judge in paras 12 and 13 of the impugned order observed thus:-

"12. On thoughtful application of mind

to the rival submissions and on considering the F.I.R. and statements of the witnesses, although I find substance in the submission of Mr.Parab that the role of the Architect with reference to the construction of building is very limited and that the liability of the architect expires after two years from the date of completion of the relevant part of the work, I am not in agreement with the submission that the Architect and structural engineer are not responsible for the collapse. Although it is proved that after two years the responsibility of the accused persons expires but that is related to the work done by him. It is true that the architect do not guarantee the work of the contractor but fact remains that damage was caused to the building due to the weak foundation and incorrect place

of columns and for this purpose if the design is supplied to that effect by the accused persons, in view thereof they are required to face the charge of negligence and also can be held as responsible for the collapse of the building. There is liability of the structural engineer for the design, parameters submitted, the certificate of structural stability issued. Here the negligence on the part of accused is required to be proved by the prosecution and in my opinion a fair chance deserves to be given to the proseceution to prove the allegations. At this prima facie stage, it cannot be said with certainty as to what type of structural changes were made by the residents. The submission of Mr.Parab that the contractors who actually constructed the building are not added as accused in this case. It cannot

relinquish the accused persons from their responsibility.

13. I am not in agreement with submission of Mr.Parab that no intention to cause death and its knowledge can be attributed to the accused applicants. There are statement of the witnesses on record which otherwise speaks of the inferior quality of the work and for that the applicants are severally and jointly responsible."

11. I have perused, with the assistance of Mr.Marwadi and Mr.Nakhwa, the materials which have been produced before the learned Additional Sessions Judge, including the extracts of report of Mr.Raikar. It is difficult to agree with the learned Judge once he records the above prima facie conclusion that sufficient materials are produced, as far as the present applicant is

concerned, to frame a charge under section 304 of I.P.C. Prima facie, when the applicant had no connection with the firm which was entrusted with the construction work and his services being engaged only for preparation of designs of structure so also the reason for collapse, being prima facie, the defect and deficiency in and inferior quality of work, then, it is not possible to sustain the conclusion of learned Additional Sessions Judge.

12. In my view, nothing more need be said at this stage. Once, the Additional Sessions Judge himself found substance in the contention of the applicant's advocate, there was no reason for him to proceed and frame a charge against the applicant, accused No.1 under section 304 of I.P.C. The nature of the duties performed by the applicant in the project so also the period of his engagement were vital factors which could not have been ignored by the learned Judge once, he

found that they are germane and relevant to the issue. In such circumstances, I do not find that this is a fit case to frame a charge against the applicant accused No.1 under section 304 of I.P.C. The discharge application should have been allowed to this extent.

13. In the result, Rule is made absolute in terms of prayer clause (a). Impugned order dated 10th July 2006 passed by the Additional Sessions Judge, Greater Mumbai on discharge application No.250 of 2006 is set aside and the applicant stands discharged from the case to the extent that he is sought to be proceeded under section 304 of I.P.C. Applicant shall however be answerable to the charge under the other provisions as enunciated in the F.I.R. Applicant is at liberty to raise appropriate contentions with regard to the jurisdiction of the learned Additional Sessions Judge to proceed and try the applicant accused.

(S.C.Dharmadhikari, J)